



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES UNIFIED POLICY FOR DISMISSING AND RETURNING APPLICATIONS AND DISMISSING PLEADINGS ASSOCIATED WITH APPLICATIONS

New policy to take effect May 1, 1999

Currently the Wireless Telecommunications Bureau (Bureau) receives hundreds of thousands of applications annually involving wireless radio services under Parts 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101, as well as Commercial Radio Operators under Part 13 and Antenna Registration under Part 17 of the Commission's Rules (collectively referred to herein as "applications"). Most of these applications when submitted are generally "in good order" (*i.e.*, can be processed without correction by the applicant). Applications filed in good order significantly assist the Bureau in its efforts to provide timely, efficient public service. Many wireless applications, however, are not filed in good order (*e.g.*, are incomplete or contain inaccurate information) and, consequently, cannot be processed without obtaining additional information from the applicant.

Prior to adoption of the *Univocal Licensing System (ULS) Report and Order (ULS Report and Order)*,¹ the Commission's Rules contain a variety of service-specific rules for dismissal or return of incomplete or facially defective applications. Under these rules, such applications could be subject to dismissal, but the Bureau staff also had discretion to return applications providing the applicant an opportunity to correct deficiencies without losing its fee and/or place in the processing line. As a result, different procedures and practices evolved with respect to the return of applications.

In the *ULS Report and Order*, the Commission adopted a new uniform rule with respect to dismissal and return of defective applications in all wireless services, and eliminated previously inconsistent service-specific rules. In accordance with the order, and in an effort to conform our procedures for processing applications in all wireless services, we are establishing a new unified

¹ The *Report and Order* in WT Docket No. 98-20, adopted September 17, 1998 (*ULS Report and Order*), established rules that form the regulatory framework for full deployment of the ULS. In brief, the ULS is a new, interactive licensing system developed by the Bureau to consolidate and replace eleven existing licensing systems used to process applications and grant licenses in the wireless services. Complete information on the ULS may be found on the Internet at <http://www.fcc.gov/wtb/uls>.

policy for dismissing and returning wireless applications. We are also taking this opportunity to establish a new policy on the treatment of pleadings associated with wireless applications. Our new policy is intended to promote (1) the filing of applications (and pleadings associated with such applications) in good order, (2) the expedited processing of all wireless applications, and (3) consistency in the treatment of all applications received by the Bureau. Accordingly, notice is hereby given that all wireless applications filed on or after May 1, 1999, will be subject to the new unified policy described below. Applicants are encouraged to examine their applications carefully prior to filing with the Bureau to prevent undesired results.

To ensure that the public understands our new unified policy, the Bureau plans to hold a public forum prior to implementation, which will be announced via a future Public Notice. This will provide interested parties an opportunity to ask questions and seek clarifications with regard to specific circumstances that may not be treated in detail herein. Also, the Bureau will post information on this new policy on the Internet at <http://www.fcc.gov/wtb/uls.html>.

POLICY ON DISMISSALS

Section 1.934(d) of the Rules, as recently amended, states that the Commission may dismiss as defective, applications that: (1) are unsigned or incomplete with respect to answers to questions, informational showings, or other matters of a formal character; (2) request an authorization that would not comply with one or more of the Commission's Rules, and do not contain a waiver request (or in cases where the waiver is denied contain an alternative proposal); or (3) do not contain an adequate fee.² As under prior rules, the Bureau also retains discretion to return a defective application in lieu of dismissing it. Our goals here are to facilitate the timely processing of wireless applications and unify our processes under the ULS. We believe the unified policy outlined below will promote consistency and increase the number of applications that are submitted to the Bureau in good order. Further, the policy will decrease the number of applications processed by the staff that require additional information to be submitted.

As a result, the Bureau may dismiss without prejudice any application that:

- Is not signed;
- Does not contain an adequate fee (including waiver requests and requests for fee exemption);
- Requires a specific FCC Form or Schedule to be submitted and the Form or Schedule is missing;
- Requires a specific showing under the Rules (e.g., frequency coordination, an engineering study, a certificate of service to other licensees) and the showing is missing, invalid, or inconsistent with other information provided in the application and renders it unprocessable;
- Proposes operations not permitted under the Rules and does not properly request a

²

See 47 C.F.R. § 1.934(d), adopted in the ULS Report and Order.

- waiver;
- Proposes use of a radio antenna structure that requires FCC Antenna Registration and the Registration Number of the structure is not provided by the applicant (see Policy on Antenna Structure Registration *infra*); or
- Is missing information or contains information inconsistent with the Bureau's licensing records and renders the application unprocessable (excluding cases where the applicant provides in its application evidence that the Bureau's records are inaccurate).

Applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications. As newly-filed applications, they could be deemed untimely filed with respect to a filing window or other competing applications and be dismissed for these reasons. In addition, these refiled applications must be accompanied by a new filing fee.³

POLICY ON RETURNS

Under our unified policy on dismissals, we anticipate that the number of applications returned to the applicant for amendment will be greatly reduced. Even so, there will be limited circumstances where the Bureau will return an application to the applicant for correction. For example, an application containing an engineering study or legal showing as required by the Rules may be in good order, but staff may require clarification of some matters or more detailed information than initially submitted by the applicant but not explicitly required by the rules. In cases where the application is returned, the applicant must respond by amending its application to provide the requested information within 30 days.⁴ Returns will be done by letter and will clearly state that failure to respond within 30 days will result in dismissal of the subject application. If at the end of the 30-day period the Bureau is still unable to process the application (whether or not it has been amended), the Bureau may dismiss the application pursuant to Section 1.934(c) for failure to prosecute. As noted above, all applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications.

POLICY ON PLEADINGS

We also take this opportunity to clarify our policy regarding pleadings associated with applications filed before the Bureau. The rules provide for interested parties to file petitions to deny applications pending before the Bureau as well as petitions for reconsideration of actions

³ In certain instances, applicants may request a refund of their original filing fees pursuant to 47 C.F.R. § 1.1113.

⁴ Previously, the rules for private wireless services specified 60 days for returning applications involving frequencies below 470 MHz and 30 days (with 45 days involving areas outside the continental United States) for applications involving frequencies above 470 MHz. See former Section 1.959 of the Commission's Rules. This section, however, was amended in the *ULS Report and Order* and moved to Section 1.934(c) of the Rules in order to unify procedural rules for all wireless services. The Bureau will normally provide 30 days for the applicant to amend its application, but this period may be shortened if conditions warrant.

taken by the Bureau under delegated authority. Pursuant to Section 1.939 of the Commission's Rules, petitions to deny may be dismissed as procedurally defective unless they meet the minimum criteria set forth below.⁵ Each petition to deny must:

- be filed manually at the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554, or electronically via the ULS (when capability becomes available);
- be timely filed (pleading cycles are set forth in the Public Notices listing the applications or major amendments as acceptable for filing);
- contain proof that a copy has been served on all interested parties;
- reference the file number of the subject application; and,
- include allegations of fact sufficient to make a prima facie showing that the Petitioner is a party in interest and that a grant would be inconsistent with the public interest, convenience and necessity (allegations of fact must be supported by affidavit of a person or persons with personal knowledge thereof).

Likewise, pursuant to Section 1.106 of the Commission's Rules, petitions for reconsideration of delegated authority actions taken by the Bureau regarding license applications may be dismissed as procedurally defective unless they meet the minimum criteria set forth below. Each petition for reconsideration must:

- be filed manually at the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554, or electronically via the ULS (when capability becomes available);
- be filed no later than 30 days from the date of final action or in cases where final actions are put on Public Notice, 30 days from the date of the Public Notice as that date is defined in 47 C.F.R. § 1.4(b);
- set forth how the action taken should be changed, and specify the type of relief sought; and,
- where the petition is based upon a claim of electrical interference to an authorized station, be accompanied by an affidavit of a qualified radio engineer showing that electrical interference will be caused within the station's protected contour; this showing must utilize either actual measurements or the methods described in the appropriate rule part for determining interference.

POLICY ON ANTENNA STRUCTURE REGISTRATION

In November of 1995, the Commission adopted rules requiring tower owners (not tenant licensees) to register with the Commission each antenna structure for which Federal Aviation Administration (FAA) notification is required. Generally, this includes all structures more than

⁵ See also 47 C.F.R. § 1.2108 concerning petitions to deny auction long form applications. Nothing in this Public Notice is intended to alter our procedures with respect to auctions.

60.96 meters (200 feet) above ground or located near or on a public use airport. The specific registration criteria is contained in Part 17 of the Commission's Rules, and summarized in WTB Fact Sheet #15. The registration rules required preexisting structures to be registered between July 1996 and June 1998. At this point, all existing structures meeting the registration criteria are required to have been registered and proposed structures must be registered prior to construction. Parties unfamiliar with the Commission's Rules concerning antenna structure registration should obtain a copy of WTB Fact Sheet #15 via the Internet at <http://www.fcc.gov/wtb/antenna>, or by calling the Bureau's Public Safety and Private Wireless Division at 202-418-0680.

Changes concerning Antenna Structure Registration Applications (FCC Form 854).

Owners of antenna structures required to be registered pursuant to Section 17.4 of the Commission's rules must first file FAA Form 7460-1 with the FAA and obtain a final determination of "no hazard" for the structure. Second, owners must file FCC Form 854 with the Commission either manually or electronically to register the antenna structure. Beginning May 1, 1999, we will return as unprocessable registration applications where data on the final FAA determination does not agree with data submitted on FCC Form 854. Specifically, site coordinates must be within one second of latitude and one second of longitude and heights must be within one foot.

Applicants should note that we provide an interim Registration Number online to those registering electronically. Similarly, applicants filing manually that utilize our online database may notice that an interim Registration Number is assigned when the application is keyed into our system. Subsequently, upon review of the final FAA determination, the Bureau may rescind the Registration Number if the application is found unprocessable. This action may render radio license applications defective if they rely upon an interim Registration Number which has been rescinded.

Changes Concerning License Applications

Today we are clarifying the policies that will be used to process radio station license applications expeditiously with regard to Antenna Structure Registration in the wake of the ULS. Applications proposing new operations or modifications to existing operations on antenna structures filed on or after May 1, 1999, must contain the FCC Antenna Registration Number if registration is required for the site under Part 17. (Note: Later in this section we provide extended implementation until July 1, 1999, for newly constructed antenna structures). In these cases, if the Registration Number is not present, the application will be dismissed without prejudice. In certain instances registration is not required pursuant to Section 17.14 of the Commission's Rules if a structure is shielded, if the "20 foot rule" applies, or if the antenna structure is fixed by function at an airport. In lieu of a registration number, applicants who claim registration is not required must so state on their application or it will be dismissed.

Structure owners are required to provide a copy of the Registration (FCC Form 854-R which includes the Registration Number) to all tenant licensees in cases where registration is required. Accordingly, tenant licensees should obtain a copy of the Registration from the owner in order to provide the Registration Number on each application submitted to the Bureau.

In determining whether registration is needed for a site, the Bureau will first determine whether the overall height is more than 60.96 meters (200 feet) above ground. Second, the Bureau will use its TOWAIR software to determine whether structures near public use airports require registration. The TOWAIR software is available free of charge via the Internet at <http://www.fcc.gov/wtb/antenna/towair.html>, and will permit applicants to verify whether registration is required prior to submitting a license application.

Extended implementation until July 1, 1999, for new structures. We realize this policy will require operational changes in the way licensees and structure owners perform regulatory work for newly-built structures. For example, some licensee/owners are accustomed to notifying the FAA of proposed construction at the same time they file an FCC license application, and then registering the structure while their license application is pending before the Bureau. In the future, however, applicants must notify the FAA well in advance and obtain a Registration Number from the Bureau prior to submitting a license application. In order to provide ample time for licensees and owners to revise their internal regulatory procedures accordingly, we will not begin dismissing applications for failure to provide a Registration Number involving a new structure until July 1, 1999 (*i.e.*, the policy will apply to applications filed on or after July 1, 1999). During the interim, an application should state, in lieu of supplying a Registration Number, that the application involves a new antenna structure and that registration will occur immediately upon receipt of a FAA determination for the site. Notwithstanding this interim relief for new towers, the Bureau urges licensees and antenna structure owners to initiate changes in their internal regulatory processes immediately, as applications containing a registration number will be processed more expeditiously than those claiming an interim exemption to our dismissal policy.

We also realize that there may be situations where the Commission establishes filing windows without enough lead time for the applicant to notify the FAA, obtain a Registration Number, and file a timely application within the window. Applicants under these circumstances should file timely within the applicable window and simultaneously request a waiver of the instant policy.

FOR FURTHER INFORMATION

On an ongoing basis, the Bureau will use its website to disseminate information and clarifications concerning the policies described herein. Information that will be available in the coming weeks includes Public Notices released in this regard, announcement of a public forum to discuss the policy in detail, and a list of frequently asked questions (FAQ) developed from the public forum and inquiries we receive. Interested parties should bookmark their web browser at <http://www.fcc.gov/uls>.

We are also providing staff contact in each of our licensing areas that may answer questions via phone or email.

For Commercial Wireless Service information contact Charlene Lagerwerff at (202) 418-1349 or via email at clagerwe@fcc.gov.

For Public Safety and Private Wireless Service contact the Licensing and Technical Analysis Branch at (717) 338-2646, or via email at gvillalobos@fcc.gov.

For Antenna Registration information contact Barb Sibert at (717) 388-2522, or via email at bsibert@fcc.gov.